80-6161

IN THE UNITED STATES SUPREME COURT,
WASHINGTON, D. C.

BETTY (MINYARD) STEIN
VS.
JUDGE ROBERT HILL, NORMAN HINES R. ATTY., JOSEPH E. FRANK AND FRANCES FRANK, ET AL

NO. _____

AND

BETTY (MINYARD) STEIN
VS.
JUDGE BILL COKER, NORMAN HINES JR. ATTY ., JOSEPH E. FRANK AND FRANCES FRANK ,ET AL

RECEIVED
DEC 29 1980
OFFICE OF THE CLERK
SUPREME COURT, U.S.

RECEIVED
FEB 7 1981
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SUPREME COURT, U.S.

JURISDICTIONAL STATEMENT

Now comes Petitioner appellant, Betty (Minyard) Stein, who was plaintiff below and presents to this honorable court Petitioner"s Jurisdictional Statement concerning the consolidated cases above as follows:

(a) QUESTIONS PRESENTED BY THIS APPEAL:

(2) Whether or not the U. S. District Court below and U. S. Court of Appeals erred in granting and in affirming the Summary Judgment herein under the circumstances of these cases on the grounds that Petitioner was denied due process under the Fifth Admendment and Due process of the law and equal protection of the law under the 14th Admendment to the U. S. Constitution, since both Judges were acting without authority during a judicial proceeding involving their ministerial duties or abuse of discretion even if acting within their authority during a judicial proceeding, under 30-a Amer. Jur. sec. 78-91, especially sec. 83?

(a) Whether or not the Summary Judgment should have been granted as to Judge Coker and the dismissal on the same grounds as above and to Judge Hill and all other defendants since Norman Hines Jr. it was shown by evidence during the trial and prior to the trial and after the trial had committed estrinsic frauds which are shown upon the face of the record of the Joseph E. Frank and Frances Frank vs. Betty (Minyard) Stein cause in the Dallas County Court At Law. No.1 of Judge Bill Coker which is now on appeal to this Supreme Court and which case and almost complete record is now or should have arrived at this Supreme Court since it was sent to this court by Petitioner herein in support of her Jurisdictional Statement in Betty (Minyard) Stein vs. Joseph E. Frank and Frances Frank case which was ruled upon by the Eastland Texas Appellate court and affirmed by the Texas Supreme Court?

(b) Whether the dismissals on the same grounds should have been granted to the Franks since they were the principal and Mr. Hines was their agent who had committed these extrinsic frauds while in the scope of their employment of him?

(1) WHETHER OR NOT JUDGES ARE UNDER A DUTY TO ADVISE ONE APPEARING PRO SE AS TO THE LAW (and advising one as to the law who is appearing pro se is not the same as giving legal advice) and giving them the opportunity to support the pro se pleadings with an affidavit to rebut a pleading asking for a summary judgment by the opposition if the pro se has forgotten to or does not know to rebut with counter-affidavits a pleading requesting a summary judgment or summary judgments since to grant motions for summary judgments in a situation like this is allowing procedural law to reign over substantive law which courts may not do under our laws especially since the entire records in the cases reflect that the pro se has made sworn oaths to almost all of her pleadings while forgetting some inadvertently?

(a) Whether or not Judge Patrick Higginbotham erred and the appellate court justices who signed the judgment of Sept. 15, 1980 in not pointing out on their own motion that Judge Higginbotham erred in not pointing out on his own motion that

should
Judge Higginbothur have advised Petitioner pro se that she must under the law furnish the a counter-affidavit to an affidavit supporting a motion for motions for summary judgments, and for the failure of Judge Higginbotham and the appellate court justices who signed the judgment of 15th of Sept. 1960 to point out this duty under the law of Petitioner pro se, then these ministerial failures of failing to advise as to what the law is concerning summary judgments counter affidavits as being mandatory must language of the Federal law was allowing procedural law to prevail over substantive law and therefore substantive rights of petitioner pro se?

(b) Whether or not (1) and (a) questions above are a denial of and other same grounds due process, etc. as shown above in question No. 2 which grounds are adopted herein by reference under Rule 10, (c) V.C.C.A Rules Fed. and of civil procedure for all intents and purposes are adopted herein, to Petitioner herein?

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(3)
Whether or not the Petitioner herein was afforded due process of the law, equal protection of the law, (fair play), deprived of her Federal civil rights and state civil rights proceeded against in a communistic, agressive communistic fashion, conspired against, her (contractual rights impaired) and wrongly deprived of her property in the excessive judgment of the county court awarded by an inflamed all tenant and former tenant with bond problems with their landlords and a jury who gave no actual damages but gave the limits of the court as exemplary damages in the pleadings or proof of tenants with out a word of wonton, wilful conduct which is the legal requirements of the law in order to award exemplary damages, but which actual damages were illegally and wrongfully injected into the final judgment of the coonty court by trickery, and which county court would not even allow Petitioner to LISTEN EVEN to the trial in the county court at opportune times for her to make objections and excdptions to preserve error for appeal and appellees, county judge Coker, appellees

attorneys, and some deputy clerks, and county court clerk defrauded Petitioner in every step of the trial and Federal Judges including Judge Robert Hill in removal for causes (which were three in number

who told Petitioner when she had removed for cause from the county court into his court that if she returned to any court in another removal for cause for ANY REASON WHATSOEVER, then he would fine her and put her into jail which allowed the county court to committ the many crimes againat Petitioner including not allowing her to LISTEN TO THE TRIAL EVEN AT OPPORLTUNE TIME FOR APPELLEES and putting her from the courtroom withou true reason except to manipulate the case for the appellees and not allowing Petitioner to rebut averment with averment even or to listen to the oral argument of appellee in the county court or for Petitioner as defendant in the county court to make an oral argument, etc, by Judge Higginbotham committing his wrongful acts and by THE FIFTH CIRCUIT COURT OF APPEALS, NEW ORLEANS, IA. AFFIRMING. HIS JUDGMENTS IN BOTH CAUSES AND BY THE WRONFUL DECISIONS IN THE REMOVAL FOR CAUSES AND THE WRONGFUL AND ILLEGAL JUDGMENT OF THE COUNTY COURT AT LAW, DALLAS, TEXAS BY JUDGE BILL COKER AND THE WRONGFUL ILLEGAL ACTS OF FEDERAL JUDGE HILL CONCERNING THE THIRD REMOVAL FOR CAUSE AND ESPECIALLY HIS WRONFUL AND ILLEGALLY GIVING TO NORMAN HINES JR. ATTORNEY"S FEES BY STAting that Petitioner had removed in bad faith and when the statute of limitations had run and the county court at law had no jurisdiction and the federal courts had no jurisdcition therefore and should have dismissed according to the law, etc. ? and every subsidary question comprised fairly herein to be included in this question presented to this court? Can an allowing attorneys fees wrongfully and prejudicially to Judge Hill to Norman Hines Jr. attorney

(b) LIST OF ALL PARTIES IN BOTH SUITS:

In the [illegible] Judge Robert Hill, Norman Hines Jr. [illegible] Frank

In the County Court: Judge Bill Coker, Norman Hines Jr. [illegible]

[illegible]

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(d) An opinion was drawn or made by United States District Judge Patrick Higginbotham of the United States District Court For the Northern District, Dallas, Texas Division in both of the above causes.

1.

Petitioner does not have a copy of the aforesaid opinions since all of her copies of filed material in both cases are missing as well as her notice of appeal from the United States Court of Appeals For the Fifth Circuit, New Orleans, La. Please see letter from Supreme Court (Exhibit 5) pages 6 & 7 of 13, 981

11.

After being advised by the deputy clerk in the Fifth Circuit Court on Dec. 11, 1980 that Petitioner"s Notice of Appeal was never received by that court, and numerous other telephone calls to this Supreme Court and a motion for addittional time from this court in which to file this jurisdictional statement, which was denied Petitioner was told by the deputy clerk in the Suprmem Court yesterday Dec. 19, 1980 Petitioner made a quick call to The Honorable Gilbert Ganacheau, Clerk of the Fifth Circuit court and told him what the deputy clerk in his office told Petitioner concerning the notice of appeal and Mr. Ganacheau later telephoned Petitioner in Dallas and

(8)

her that he found the notice of appeal and would send it with the original records to the Suprmem Court just as quickly as he could since she told him she was going by way of appeal to the Supreme Court and she appreciated very much his help. Therefore, Petitioner, under the circumstances which were not her fault, and since her entire records except a few odds and ends of both cases are missing from her papers in these cases and she will therefore request and pray that this court will look to the original papers for the opinions, judgments, orders, etc.f which are required by this jurisdictional statement rule and Petitioner will simply have to rely upon her memory as well as she can as to the contnets, etc.

111.

Judge Higginbotham s opinion in the Judge Robert Hill , et al case dismissed the case and no trial was held on the grounds that Petitioner in her pleadings plead no conspiracy when in fact paragraph V. of her original Complaint showed quite clearly that she had done so. He also stated that her pleadings were not legible and did not meet with the procedural rules and herein he allowed procedure to reign over substance which is simply not tolerated by higher courts as far as Petitioner knows and of which this court can take judicial ntoice of. He also stated that Judge Hill was judicially immune when the facts plead clearly showed that he was not as well as the law pleadd He also stated that the attorney, Norman Hines Jr. was immune but no attorney is under any law that Petitioner can find immune from his delibert extrinsic frauds which are torts committed during a case and his clients who he said were not liable for him were under the law of the state of Texas liable under principal and agent theory and laws for his civil extrinsic frauds done in the scope of his employment for them as well as being civilly liable for his extrinsic frauds done while in the scope of their employment. And Petitioner the record will show plead all of these extrinsic frauds done by Norman Hines Jr. in both the Judge Hill case and Judge Coker case and therefore he was liable in boht of these cases and his clients were liable for his wrongful conduct on principal and agent theory and law And he further held in both cases that Petitioner was denied no civil rights , nor due process of the law, nor equal protections of the law,

etc.

IV.

This court will kindly refer to the original records for the remainder of the opinion since Petitioner is without her copy due to the fact that they are missing from her papers.

V.

The opinion by Judge Higginbotham in the Judge Bill Coker case held Judge Coker immune judicially and granted his motion to dismiss and Petitioner does believe to the best of her memory that the other defendants made motions for summary judgments and they were granted. The other defendants being Norman Hines Jr. Joseph E. Frank and Frances Frank. Other defendant s had been requested to be named since their acts had been prior plead in the original complaint and amended and supplemented complaints and pleadings, etc. The court will kindly look to the original papers in these matters since these papers as aforesaid are missing also since they were all filed together, except a few strays which were filed later or ruled on later, and they were found in a chair and mixed with other instruments in other cases.

VI.

The Fifth Circuit court affirmed the decisions of the lower court in both causes on September 15, 1980 and Petitioner sent her notice of appeal to the Fifth Circuit timely with proof of mailing receipt which is attached to Petitioner's lost notice of appeal although Mr. Ganacheau stated that he found Petitioner*s notice of appeal and that it was filed in their court on Sept. 26, 1980 and since Petitioner is putting this Jurisdictional Statement in the mail tonight, Dec. 20, 1980 which is Saturday, then it should reach this court timely since we have intervening Christman holidays and a Saturday and Sunday which follow

(8) The jurisdiction of this court is being asked to be invoked on the grounds of failure of due process of the law, equal protections of the law, fair play, that the appellees committed agressive communistic acts as well as Judge Higginbotham in his attempted cover-up of their known and sworn too, since the records so reflect extrinsic frauds, etc. as aforesaid and that Judge Higginbotham erred in dismissing these two causes. The records clearly show that the two judges acted completely without authority and also abused any discretion that they might have as shown in Am-30 Jur2 sec. 78 thru 91 specifically sec 83,etc. And that Petitioner was being deprived of her property without due process of the law and without her fair day in court due to the cover-up by

(10)

Judge Higginbothm was fair and just in not allowing attorneys" fees though since he well knew that Petitioner acted in good faith at all times. And since many, many fact questions were raised in these cases which no law operated to destroy, then Judge Higginbotham erred in both cases when they should have been put to trial before a jury but pressure would not allow him to do that since a Federal judge, county judge, attorney was involved. And, Petitioner was also deprived of her civil constitutional and rights by Judge Higginbotham in dismissing, arbitrarily, both of these cases and defendants.

(i) This is an appeal brought pursuant to United /States Constitution, 3 sec 2, cl. 1. Jurisdiction of the Courts stating in Sec. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, The Laws of the United States, etc. and Sec 2, Cl 2. Supreme Court, Original and APPELLATE JURISDICTION stating ----------. In all cases the other before memtioned, the supreme court shall have appellate jurisdiction, both in law and fact, with such Excep5ions, and under such Regulations as the Congress shall make.

And therefore, and Federal statute which is contra to this Constitutional section on appellate jurisdotion of the Supreme Court of the United States is null and void is Petitioner"s opinion and therefore Petitioner has the right to appeal this case and requests kindly and demands kindly Petitioner"s right. Also, the case Robert G. Gallagher, v. Robert E. Quinn, et al Judges of the United States Court of Military , 363 Fed2 301 states under point r under Courts, The United States Suprmem Court is the final arbiter of due process under the Federal Constitution, U. S. C. A. Const. Amend, 5. 4 to due process denied,

(ii) The judgment of the court of civil appeals was Sept. 15, 1980 and presumably it"s entry date since my papers are missing as aforesaid, and under the new local rules of the Fifth Circuit aforesaid no motion for rehearing is necessary, and Petitioner sent her notice of appeal timely but her copy with proof of mailing receipt is missing as aforesaid but it was sent to the Fifth Circuit timely and Mr. Ganacheau, the clerk of the Fifth Circuit stated by telephone after he found it, that it was dated Sept. 26, 1980 and in his opinion if Petitioner was appealing as she stated to him she was then she would be timely in her appeal to the Supreme Court he beliaved.

(iii) Petitioner is not relying upon a statutory ppovision in her appeal

(11)

that she has been able to find although she is relying upon the United States Constitution, 3 sec 2 cl 2 as aforesaid and there might be a statute on this section although Petitioner has not had time to find it, but, this Honorable court can take judicial notice of such a statute if one does exist.

The case cited above, the Gallasher v. Quinn case seems sufficient to Petitioner since she does not have time to cite or find others. It was a 1966 case and seems to still stand as good law.

Petitioner as aforesaid stated that the local rules of the Fifth Circuit require no motion for rehearing now and Petitioner did not make one; although she did make them in the court below And they are in the original record since as aforesaid her copies of all of her filed material are missing in both these cases for some strange reason and therefore she cannot append them as well as her copy with proof of mailing receipt attached thereto of her timely ntoce of appeal to the Fifth Circuit, but, as aforesaid Mr. Ganacheau, the clerk of the Fofth circuit promised by telephone yesterday Dec. 19, 1980 to mail it with all of the original records to this Supreme Court as quickly as he could.

(9) This case invloves protections guaranteed to her by the U. S. Constitution that there shall be no impairment of contractual obligations and the simple oral lease agreement between the parties was completely changed by the respondants lessees and their attorney Norman Hines Jr. to be a deposit for rent and reasonable wear and tear damages if any, when the Petitioner lessor made it very clear to the lessees before she rented or leased to them that the $350.00 was to be for "cleaning and damages" which might be done to the apartment since they were a copple with a five month onld baby and the apartment had very expensive pale subtle pink woo shag never been used carpets thereon AND THA" THE PRACMENT MUST BE LEFT IMMACULATE and that the apartment being left upon vacating immaculate for the incoming tenants had absolutely nothing to do with reasonable wear and tear and the couple agreed to have the carpets cleaned upon vacating by their oral agreement and, they simple elected themselves as law, judge and jury in order to create a distrubance in order to break the lease etc. therefore the court below allowed the contract to be impaired from the original intent of both parties. And, allowed an inflammed jury of prejudiced tenants anf former tenants qirh vons reouvlwa qirh rhwie doemwe INndlord" etc. and Pet. made her obj. and exc. to the jury before the trial and Judge Coker overruled her and would not allow the statement of facts to be transcribed this matter since he knes the jury was inflammed, etc. This Sup. Court knows human nature well enough to know that jurors of this nature who would give this excessive amount as exemplary damages would fabricate to the judge that they could be fair in this type of case and Judge Coker knew it and Norman Hines Jr. knew it. Justice Robert Cole in Dallas, Texas knows this fact so well that he will not allow a jury even in landlord and tenant cases.

and of the no impairment of contract clause in the U. S. Const. this court can take judicial notice as well as the fair play caluse guarantee clause of the U. S. Constitution. Therefore, also Petitioner is relying upon U. S. Constitutional Art. V as to the failure of the guarantee by this constitution of the United States to protect her property. Also, as to this guarantee as to the due process of the law as to protect her property the 14th Adm. is being used herein as clause well as the equal protection of the law clause and this court can also take judicial notice of the "fair play" clause. Due process due process of the law guarantees that a citizen including Petitioner must b3 heard by fully competent persons which the record clearly shows that she was not so heard and therefore she must now rely upon the Justices of the United States Supreme Court for the proper adjudication of this case. Under Title 42, sec. 1983-85 she was deprived U. S.C.A. , Fed. Rules of Civ. Proc. of her Federal civil rights by being deprived of her state civil rights under Texas Consitituion, Bill of Rights and proper subsections guaranteeing protection of her property, etc. by officials while acting under the color of office and she is protected by the approporiate subsections guaranteeing protection of her property under the Federal Bill of Rights; and under Title 28, sec. 1343, (1), (2),(3) and (4) U. S.A.A., Fed. Rules of Civ. Proc. Also, V.a. T. C. C. sec. 39.91 and 39.02 were breached by Judge Coker due to his misconduct Substitute and oppression and also by official court reporter Bryan Coday and official court reporter Myra Parrish . Judge Mill was responsible for fraud upon the court as well as Judge Coker under 30 Amer2, sec. 78 thru 91 and specifically sec. 83 since both acted WITHOUT AUTHORITY in their aforesaid acts even though in a judicial proceeding the record clearly shows which was sworn to by Petitioner. And, to allow these constituional breaches as aforesaid throughout the record on county, U. S. District, and appellate levels and the level of this Supreme court allows only more crime upon innocent citizens as Petitioner herein on the grounds of aggressive and in the name of agressive communisum.

SHORT STATEMENT OF THE CASES

Some of the pertinent facts IN THE Judge Hill , et al case are as follows: Petitioner sued Judge Robert Hill, et al because at the time she removed for cause from the county court, at laa Dallas County court of Judge Bill Coker Judge Hill was manipulating the case since he knew Petitioner was pro se and he began by stating that the attorney Norman Hines could state his case and then put on his evidence as to attorney*s fees and he was not going to even allow Petitioner to put on her side of the case even but she stood ground with him and he finally allow her to argue shortly but cut her off without allowing her to finish her argument, and in the inception without ever hearing any facts under oath or other wise of evidence in the case stated to Petitioner " Why don*t you give dthe deposit backd to the Franks . very sarcastically and superman type without any knowledge of being a gentleman judge and genteel

refinement of a true judge, but reflected the horrible character of a dictator and a sadistic animan in his presumptions without any facts under oath by anyone. Judge Hill also at time that of the hearing on appellees motion to remand to the county court told Petitioner that if she came back to his court or any court on removal for cause that he was placing her under an injunction for any reason whatsoever that he would fine her and place her in jail . And, of course, this illegal injunction gave the appellees and Judge Coker their Golden opportunity to committ all of the crimes which were plead in these two cases herein on appeal against her. No judge, Federal or otherwise has the power to place anyone under an injunction in a removal for cause remand hearing that they cannot ever come back into their court or any court FOR ANY REASONS since this type of injunction allows every sort of crime to be committed against the one removing for cause as was committed against Petitioner herein before the actual trial at other pre-trials and during the trial and after the trial and on all of the appeals to the Dallas appellate court which transfereded the cause to the Eastland appellate court where they did their hatchet job just as the Dallas appellate court did their in the petitions for writs of mandamus rulings etc. The Dallas appellate court even had to literally destroy it*s first opinion since their lady deputy clerk would not allow plaintiffd to file her bills fo exceptions as material needed for th eappellate court to make it*s decision for writ of mandamus or not, etc. and many more communistic criminal acts towards Petitioner. Judge Hill as an experienced judge could also see that wonton conduct, wilful conduct had not been plead in any of the pleadings at that time of the removal for cause into his court and on his own motion knowing that they were necessary requirements of the law to support exemplary damages which he saw the appellees had asked for, upon his own motion he knowing the county court did not have jurisdiction since those requirements of the law had not been met should have dismissed the case and also it was called to his attention that the statute of limitations had run ok the tort claim of the appellees which was a new cause of action for a greater amount of money. But, he was it was quite obvious hell bent on throwing the case for Norman

Hines Jr. and the Franks in order for them to get some of Petitioner"s property and for Norman HInes Jr. to get illegal atto ney"s fees by holding that Petitioner had removed for cause in BAD FAITH. Petitioner does not even know what the term bad faith means since she has never in her entire life done anything in bad faith. And, NORMAN Hines Jr. executed the judgment on the attorney"S FEES AND THE BONDING COMPANY PAID THEM TO HIM PREMATURELY AND BEFORE Plaintiff finished her appeals and he did this with knowledge and the bonding company paid off to him with knowledge before Petitioner had time to bring this case against JUDGE HIll et al for fraud upon the court And by this wronful action of Norman Hines Jr. , the bonding company refused to make bond for Petitioner in her T.P. and L. case, re-condemnation case of 1967 which was tried last year in the county court at law of Judge Jay Ray Martin which is now on appeal in Ft. Worth and much fraud was exercised in that case and the statements of facts on the merits had appr. 166 pages of errors with many of them material errors, etc. And therefore Norman Hines damaged Petitioner by his illegal and wrongful conduct in taling these attorney's fees which he knew he did not deserve but manipulated to get them just as he manipulated in an any means to an end manner to get the judgment in the county court against Petitioner for over $5,000.00 which she does not have. And Judge Hill also deprived Petitioner of due process of the law, etc as aforesaid and her civil rights

The case against JUDGE Bill Coker, et al was brought since JUDGE Coker had committed fraud and deprived Petitioner of her civil rights below in stating that challeges for cause were limited, and in manipulating the trial by not allowing her to listen even to the trial and put her out of the court room when it was convenient and an aopportune tome for Norman Hines Jr. in his case before the jury and he would not allow defendant Petitioner in that court to meet averment with averment and would not allow her to question key witnesses as aforesaid, and would not allow her to testify , and would not allow her to put on all of her witnesses, and would not allow her to make oral argument, and would not grant dismissal of the highly inlammed all tenant and forme tenant with bond btroubles when properly and timely requested, and would not grant her motion for judgment notwithstanding verdict since the verdict was fatally

defective since it gave no actual damages but only unsupported exemplary damages as aforesaid. And, also, the appellees did not prove any fraud whatsoever against Petitioner and could not since the law allows a deposit holder to keep the deposit until the rents and damages were paid in full and to this date the remainder of the rents have not been paid by the appellees nor the damages, etc. The rental lease contract below was very simple. It was oral and supported by writings which lessor Petitioner and lessees some appellees never got around to signing, and also it was for a period lessor much later recognized of more than one year since a reasonable time was agreed to by both lessor and lessees that would be to inspect the apartment after removal and therefore came under the statute of frauds. Frances Frank testified to this fact on the witness stand but this testimony by her was delibertly cut out of the statement of facts by court reporter Bryan Cordam suvstitute court reporter after the first day of trial who was brought in by Judge Coker and after the trial set up on a new office for his changing and leaving out materiql matter in the statement of facts, etc. as aforesaid in pleadings in the record of this case in the county court at law . Therefore, in all of the manipulatinons and crimes in this case against Petitioner in the county court Petitoner brought the case against Judge "Bill Coker, et al for denial of due process of the law, deprivation of Federal civil rights by denial of state civil rights by officials under the color of office against Petitioner, etc.

Lessors , the Franks, attempted to use the cleaning and damage deposit money, which was not rentaldeposit they testified to, for rent and petitioner defendant therein simply stood ground as was her legal right until they paid their rent and for damages. The cleaning and damage bond money was to clean and not damage the apartment according to the standards of lessor they agreed top but, they attempted to change the agreement by bring lessor down to thier standards of cleaning after their promise to abide by her standards was the reason lessor entered into the agreement with them and also, their wrongful attempt to use part of the money for rent when they had specifically agreed not to their testimony showed.

Petitioner cannot give the number of the pages in the statement of

and pages in the transcript of needed material for this court etc. since all of her instruments in both cases is missing strangly; but, if this court will allow her to withdraw the originals after they arrive from the Fifth Circuit court then she can inspect them and give the page numbers needed and instruments needed herein for this court to make the proper determin.

Petitioner has suffered much damage in the past six years in the extrinsic frauds etc. spoken of by the Judges herein and the attoSney Norman Hines Jr. and some of his staff memebers in insults to Petitioner by throwing papers she delivered to them into the hall way on two different occassions although MR. Hines never threw papers outinto the hallway himself. Petitioner has suffered both mentally, emotionally and physically and financially by these crimes against her for money she does not owe to anyone but simply because all parties found out she had property and also were incited by the attorney for the Highland Park Ind. School Dis rictd and other members of the school which she had sued and she found out just before trial that Norman Hines Jr. lived in the same shcool district and had children in high school at the time Petitioner had children in the HIGH School and it became apparent with other information the true teason why she was so viciously attacked by all et c. since she had been successful, in an appeal from a summary judgment against the school District and also the fact that Frances Frank was a former school teacher who hated taxpayers since she was not paid enought when she taught school and therefore the w cle conspiracy grew and grew against Petitioner, etc. and therefore the appellate court herein erred in affirming the judgment of the Feceral District court of Judge Higginbotham in both the HILL AND Coker case and Petitioner has been denied due process of the law, etc. by all and has suffered very much from all of it merely because she had property some of it which they desired and because she fought with them as agreswive communists and she called them just what they are, and still does and simply needs the help of this court.

Petitioner went from the Federal District Court to the Fifth Circuit on points of error which are shown in her briefs to that court in both cases.

The questions presented in this appeal to this Supreme Court are so substantial as to require plenary consideration, with briefs on the merits to follow if this appeal is granted and dwith oral argument if Petitioner can raise the money to get there for their resolution by

A-515 18

because this Supreme Court is American and being American protects life , liberty, and property from communists who are any means to an end personalitites as Petitioner has witnessed and experienced in these two cases and in the case in the county court from which they grew and the other two related removal for cause cases. Petitioner"s right to hold a deposit for cleaning and damages until the balance of rent was paid and until the cl aning and damages were paid was protected by Texas law as seen in the material from the county court wherein the trial of the cause out of which these two cases before this court grew and the law protected her from being charged with fraud for doing what she had a legal right to do; otherwise there was an impairment of contract in the county court out of which these two cases before this case grew and the parties in these two cases merely aided and abetted and entered into this communistic conspiracy to get Petitioner"s property thru the $5,000.00 illegal judgment of the county court at law of Judge Bill Coker; therefore the Supreme court is the final arbiter where due process of the law has not been met by fully lcompetent persons and indeed none of the parties in these two cases befrre this court, the record clearly shows were fully competent and therefore the appellate court erred as well as the Federal District court from where these two cases came. These small cases disallowing due process of the law, etc. will simply add up against our fight against communisum which is a criminal conspiracy under our laws and Constitution and this is the reason for plenary consideration by this court for their resolution by briefs on the merits and oral argument . Petition is trying but she needs help.

WHEREFORE, PREMISES CONSIDERED PETITIONER PRAYS THAT THIS COURT GRANT THIS APPEAL TO BE RESOLVED BY THIS American Court.

As aforesaid Petitioner cannot attach an appendix since her papers herein are missing although a copy of the judgment from the appellate court in New Orleans, La is attached to the motion filed herein asking for additional time to file appeal which was denied by Justice Powell. Petitioner also requests to withdraw the original records sent by the appellate court in the event the appeal herein is granted for in addition and to do her briefs on the merits herein.

Respectfully submitted,

Betty (Minyard) Stein, Pro se

SWORN TO AND SUBSCRIBED TO BEFORE ME AND KNOWN PERSONALLY TO ME BY BETTY (MINYARD) STEIN AND THAT ALL OF HER STATEMENTS ARE TRUE TO HER PERSONAL KNOWLEDGE IN THE MATERIAL ABOVE AND ATTACHED ON THIS THE 20 day of Dec 1966.

and for Dallas County, Dallas, Texas and my com exp. Notary Public in and my com. exp. on

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

UNIT A

NOT FOR PUBLICATION

No. 80-1324
Summary Calendar

BETTY (MINYARD) STEIN,

Plaintiff-Appellant,

versus

JUDGE ROBERT HILL ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Texas

(SEPTEMBER 15, 1980)

Before BROWN, POLITZ and TATE, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

1 See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 432 F.2d 969.

JHP JRB

(4)

In the United States Court of Appeals for the Fifth Circuit, New Orleans, La.

Billy (Maynard) Stem

vs

Judge Robert Hill et al

No ——

Notice of Appeal to U.S. Supreme Court

Now Comes appellant Billy Maynard Stem and gives notice of appeal from the decision of this Court affirming the decision of the U.S. Dist. Court of [illegible] on Sept. 25, 1980

Please send all original papers to the U.S. Supreme Court

Appellant will ask this Court to allow the appeal as a pauper (I.F.P.) - I.C. he is without food and [illegible] money.

He will not make motion for [illegible]

Billy Maynard Stem

(12)

U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
DEC 27 1979
JOSEPH F. McELROY, JR., CLERK
BY _____ Deputy

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

BETTY (MINYARD) STEIN	§	
	§	
V.	§	CA-3-78-0699-G
	§	
JUDGE BILL COKER, ET AL	§	
	§	
	§	CONSOLIDATED WITH
	§	
BETTY (MINYARD) STEIN	§	
	§	
V.	§	CA-3-79-0968-G
	§	
JUDGE ROBERT HILL, ET AL	§	

MEMORANDUM ORDER

I. Background

These are two actions filed by Betty Minyard Stein against various judges, attorneys, and litigants involved in a state court proceeding against Ms. Stein.

On March 25, 1972, Ms. Stein leased to Joseph E. and Frances Frank the premises at 6602 Westchester Drive, Apartment 3, in the city of University Park, Texas. The lease was for a term of 12 months. The Franks paid Ms. Stein a security deposit of $350, to be refunded with interest upon completion of the tenancy.

On April 3, 1973, the Franks vacated the premises. They did not receive a refund of their security deposit, and in 1974 brought suit against Ms. Stein to recover the deposit (less $66.64 additional rent for the period March 25 to April 3, 1973) plus interest and $4,000 exemplary damages. Frank v. Stein, No. CC-74-8893-a (County Court at Law No. 1, Dallas County, Texas). This case was three times removed to Federal court and three times remanded. On June 7, 1978, a jury rendered a verdict against Ms. Stein, and on July 14, 1978, the judge entered judgment against her for $283.36 actual damages, $4,000 punitive damages, $106.67 interest, and $100.00 attorney's fees. On September 13, 1979, this judgment was affirmed. Stein v. Frank, ___ S.W.2d ____ (Tex.Civ.App.-Eastland 1979, application for writ of error pending).

Ms. Stein is a frequent pro se litigant. See Stein v. Texas Power & Light Co., 439 U.S. 805 (1978) (dismissing appeal from unreported decision of Tex.Civ.App.-Fort Worth); Stein v. Frank, 575 S.W.2d 399 (Tex.Civ.App.-Dallas 1978, no writ); Stein v. Andress, 570 S.W.2d 9 (Tex.Civ.App.-Dallas 1978); Stein v. Highland Park Independent School District, 540 S.W.2d 551 (Tex.Civ.App.-Texarkana 1976, writ ref'd n.r.e.), 574 S.W.2d 807 (Tex.Civ.App.-Texarkana 1978, writ dism'd); Stein v. Lewisville Independent School District, 481 S.W.2d 436 (Tex.Civ.App.-Fort Worth 1972, writ ref'd n.r.e.), cert. denied and appeal dismissed, 414 U.S. 948 (1973), 496 S.W.2d 737 (Tex.Civ.App.-Fort Worth 1973, mandamus overruled). Indeed, Ms. Stein appears regularly in the Northern District itself. See, in addition to the two present actions, Stein v. City of University Park, No. CA-79-1234-C (N.D. Tex., filed September 29, 1979); Stein v. Carver, No. CA-3-79-1130-H (N.D. Tex., filed Sept. 6, 1979); Stein v. Giles, No. CA-3-76-1207-G (N.D. Tex., filed Sept. 13, 1976); Stein v. Robertson, No. CA-3-74-109-C (N.D. Tex., filed Feb. 6, 1974); Stein v. City of University Park, No. CA-3-7668-B (N.D. Tex., filed Sept. 17, 1973); and the three removal actions described above, Stein v. Frank, Nos. CA-3-77-1604-D, CA-3-77-911-G, and CA-3-76-301-F.

II. Stein v. Coker

In No. CA-3-78-0699-G, Ms. Stein has brought suit against the Honorable Bill Coker, Judge of County Court at Law No. 1 of Dallas County, Texas, who presided over the trial involving Ms. Stein in that court, and against the Franks and Norman P. Hines, Jr., their attorney. In an amendment to her complaint, Ms. Stein also names Chuck Hammer, a marshal in Judge Coker's court, and Dallas County, Judge Coker's employer, as defendants.[1] Broadly construed, the complaint alleges that Judge Coker refused to permit

[1] Hammer has not been served with process, although he and the County were named as defendants by amendment of the complaint on August 9, 1979.

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plaintiff to state the grounds for objections made by her during the trial, and that he ejected her from the courtroom during a critical part of the trial. She also complains of a number of the judge's rulings which she believes to be erroneous. She alleges that Judge Coker destroyed and concealed documents relating to the case.

Ms. Stein alleges that defendant Hines tortiously interfered with her attempt to have process in this action served on his clients, by advising them to refrain from returning to the courtroom to hear the jury verdict in their case. She also alleges that he made misrepresentations to the Court of Civil Appeals at the appellate argument in the case. The complaint contains additional general allegations that Hines conspired with and aided and abetted Judge Coker in his tortious conduct toward plaintiff. Ms. Stein alleges that Hines' clients are vicariously liable for their attorney's actions.

With regard to defendant Hammer, plaintiff complains of his refusal to execute an affidavit on her behalf setting forth his observations at the trial.

By order of August 30, 1979, this court granted Judge Coker's motion for summary judgment based on judicial immunity. See Stump v. Sparkman, 435 U.S. 349 (1978); Chalk v. Elliott, 449 F.Supp. 65 (N.D. Tex. 1978). On September 25, this court denied plaintiff's motion to set aside this summary judgment. Plaintiff has filed a motion for reconsideration of this latter order. The remaining defendants who have been served with process have moved to dismiss.

III. Stein v. Hill

In No. CA-3-79-0968-G, Ms. Stein has brought suit against Judge Robert M. Hill of this court, together with attorney Hines and the Franks. This action arises out of plaintiff's third attempt at removal to this court of the state court action against her. Judge Hill, believing the removal to be improper and to be

taken in bad faith for the purpose and intent of frustrating the trial issues in the state court, remanded the case to the state court and enjoined plaintiff from again removing the action so long as it remained as then constituted. Judge Hill awarded attorney's fees of $390, which was ultimately paid out of Ms. Stein's removal bond, in favor of the Franks, and found reasonable attorney's fees for any appeal of his decision to be $1,200, with an additional $720 if the case were set for oral argument.

Plaintiff alleges that Judge Hill and attorney Hines conspired to wrongfully cause the case to be remanded. She seeks money damages together with an order vacating Judge Hill's injunction and an injunction against collection of the attorney's fees award from her bonding company. Judge Hill has moved to dismiss on grounds of judicial immunity. The remaining defendants have answered by way of denial.

IV. Judge Hill

Judge Hill's motion to dismiss must be granted for the same reasons which led this court to grant Judge Coker's motion to dismiss. Civil Action No. CA-3-77-1604-D was an action commenced in the United States District Court by the plaintiff in this case, on petition for removal of an action pending in a court of the State of Texas. Judge Hill therefore had jurisdiction to entertain the petition for removal. See 28 U.S.C. §§ 1441 et seq. This is therefore not a case in which a judge has acted in the clear absence of all jurisdiction. See Stump v. Sparkman, supra, at 357.

Plaintiff contends that there is an exception to the principle of judicial immunity where the allegedly wrongful act is merely ministerial, and she complains that Judge Hill violated "his ministerial duty to give complaintant [sic] a fair and just hearing." There is, however, no distinction between ministerial and discretionary acts for the purpose of applying the principle of judicial immunity. Chalk v. Elliott, supra, at 68. An act is

"judicial" for this purpose whenever it relates to a "function normally performed by a judge" and if the parties "dealt with the judge in his judicial capacity." Stump v. Sparkman, supra, at 362.

Nor may plaintiff avoid application of judicial immunity by her contention that the specific actions of Judge Hill were erroneus, malicious, or in excess of his authority, or constituted a denial of procedural due process.[2] Judge Hill is absolutely immune from liability to plaintiff in this suit, and, as to him, the complaint must be DISMISSED.

V. Attorney Hines

The allegations that defendant Hines interfered with plaintiff's service of process on his clients, and that he made representations to the appellate court, fail to state a cause of action under 42 U.S.C. §§ 1983 and 1985. In performing the alleged acts, attorney Hines was not acting "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory," as required by § 1983. As stated in Jones v. Jones, 410 F.2d 365 (7th Cir. 1969), cert. denied, 396 U.S. 1013 (1970),

> [l]awyers who are not also parties in interest and are engaged in private litigation on behalf of clients do not act under color of state law within the meaning of 42 U.S.C. Sec. 1983. ... The state merely provides a forum for the litigants and although lawyers are considered "officers of the court," they are not officers of the state within the meaning of the Civil Rights Act.

410 F.2d at 366. See French v. Corrigan, 432 F.2d 1211, 1214-15 (7th Cir. 1970), cert. denied, 401 U.S. 915 (1971).

The complaint also alleges that Hines conspired with Judge Coker to deprive plaintiff of her rights. While until this year, a private party alleged to have conspired with an immune state

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[2] Although Judge Hill's immunity does not depend upon the correctness of his ruling, it should be noted that the power of a judge to enjoin a party from relitigating matters in a repetitious and vexatious manner is well established. Kinnear-Weed Corp. v. Humble Oil & Refining Co., 441 F.2d 631 (5th Cir.), cert. denied, 404 U.S. 941 (1971).

official was himself immune, Guedry v. Ford, 431 F.2d 660 (5th Cir. 1970), the law in this circuit is now clear that there is no such derivative immunity. Sparks v. Duval County Ranch Co., Inc., 604 F.2d 976 (5th Cir. 1979) (en banc). However, the allegations of conspiracy between attorney Hines and Judge Coker are, like the allegations in Henzel v. Gerstein, ___ F.2d ___, ___ (5th Cir. 1979), "wholly conclusory and unsupported," and do not present an obstacle to dismissal of the claims against attorney Hines.

Defendant Hines likewise cannot be held liable for conspiracy under 42 U.S.C. § 1985. As the Fifth Circuit recently noted in Baskin v. Parker, 602 F.2d 1205 (5th Cir. 1979):

> Section 1985 does not grant a cause of action for every conspiratorial tort or for every wrong committed by common plan or design; it grants a federal cause of action only for conspiracies to deprive "any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws." A racial or class-based animus is an essential element of an action under 42 U.S.C. § 1985(3).

602 F.2d at 1208-09. Accord, Almon v. Sandlin, 603 F.2d 503, 505 (5th Cir. 1979); Crowe v. Lucas, 595 F.2d 985, 990 (5th Cir. 1979). See Griffin v. Breckinridge, 403 U.S. 88, 102 (1971). No such animus has been alleged here.

Accordingly, plaintiff's claims against defendant Hines are hereby DISMISSED.[3]

VI. The Franks

Plaintiff maintains that the Franks are vicariously liable for the torts of their attorney. Even if a claim had been stated against Hines, the law is clear that

> [t]he master is liable for the negligent acts of his agent under the doctrine of respondeat superior only where there further exists the relationship of master and servant at the time and in respect to the very thing causing the injury and from which it arises.

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[3] To the extent that plaintiff's claims are cognizable under state law, the court declines to exercise pendent jurisdiction. United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1966).

38 Tex. Jur.2d Master and Servant § 242 (1962). The relationship between a party and his nonsalaried attorney more nearly approximates that of a party and an independent contractor than that of a master and servant. While a client possesses the undeniable authority to give general directions to his attorney concerning the conduct of litigation, the details of the attorney's representation of the client are matters within his professional discretion. He accordingly is not to be characterized as an employee of the client for purposes of vicarious liability. See id. § 241. The complaint therefore states no claim against the Franks for the alleged torts of defendant Hines, and must therefore be DISMISSED as to them.

VII. Fed. R. Civ. P. 8 and 11

Fed. R. Civ. P. 8(a) requires that a complaint in Federal court contain "a short and plain statement of the claim showing that the pleader is entitled to relief ... ." Rule 8(e)(1) states that "[e]ach averment of a pleading shall be simple, concise, and direct." Rule 11 establishes a standard of good faith and sets forth sanctions to be imposed for the filing of pleadings containing scandalous or indecent matter.

The numerous pleadings filed by Ms. Stein in the present matters fall afoul of these standards. To begin with, virtually all of Ms. Stein's pleadings, both those which are handwritten and those which are typed, are nearly illegible. These pleadings are also extremely lengthy and fail to set forth plaintiff's contentions in anything even approximating a coherent fashion. The complaints and multitudinous supplements thereto are written in a rambling "stream of consciousness" style, and it is extremely difficult for the court and opposing counsel to sift the

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wheat of colorable claims from the chaff of wild accusations. Many documents contain language which is extremely disrespectful of opposing parties and counsel, including a reference to a judge of this court as a sadist and a veiled threat that the present judge would be sued for his ruling dismissing Judge Coker.

It is of course true that allegations of serious misconduct by judges and attorneys are by their very nature scandalous. Plaintiff could not be faulted for seeking the aid of the courts in redressing her grievances if she in good faith, albeit erroneously, believed them to be legitimate. A complaint seeking such redress may of necessity involve allegations of fraud and other misconduct. Nonetheless, the language of plaintiff's allegations goes far beyond what is necessary to adquately state her case, and negates any inference that she is acting in a good faith attempt to litigate a bona fide claim.

The present cases are not the first occasions on which plaintiff has employed such tactics. In Stein v. Highland Park Independent School District, supra, the Texarkana Court of Civil Appeals had this to say concerning plaintiff's modus operandi:

> The brief of Mrs. Stein, appellant, on file with this Court is saturated with disrespectful language and unjustified accusations against the trial judge and opposing counsel. Following are a few examples: the judge and appellee's attorney "culprits"; judge guilty of "cheap tricks"; dismissal of case "based on emotion"; judge lacks integrity and is guilty of extreme prejudice and bias, misconduct and corruption and bad faith; judge conspiring with counsel to "throw case" and then cover it up; judge attempts to avoid crimes of former tax collector; and based his decision of dismissal upon pure emotion or his own law based upon emotion. These and other scurrilous and disrespectful accusations are found throughout appellant's brief and are inseparable therefrom and of themselves would afford just grounds for striking her brief from the files of this Court.

574 S.W.2d at 809. The court analogized that case to Martin v. Bishop, 238 S.W. 1018 (Tex.Civ.App.-San Antonio 1922, writ dism'd), where the court stated:

> The first proposition contains a violent attack upon the character and motives of the trial judge, attributing to him such corruption and depravity as would utterly unfit him to hold the high and important office of district judge, without one thing in the record tending to justify the accusations. ... No such flagrant and outrageous disregard of the amenities which should always exist between bench and bar has ever before been filed in this court, and briefs containing such an exhibition of lack of respect for constitued authority upon the part of an attorney will not be permitted to remain as a part of the records of this court. The briefs will be stricken from the files of the court.

238 S.W. at 1018. Plaintiff has thus been amply forewarned of the inappropriate nature of her behavior.[4]

While Ms. Stein appears in these actions pro se, she is required by Local Rule 13.7 to make a good faith effort to comply with the Federal Rules of Civil Procedure. No such good faith effort has been made here. Fed. R. Civ. P. 11 provides that a pleading which contains scandalous or indecent material may be stricken, and the court orders that plaintiff's complaints be DISMISSED for failure to comply with Rules 8 and 11, independently of the dismissal of those pleadings for failure to state a claim upon which relief may be granted.

VIII. Conclusion

The court makes the following orders:

1. These two actions are consolidated for all purposes.

2. Plaintiff's motion to reconsider the order overruling her Rule 60 motion to set aside the summary judgment in favor of Judge Coker is DENIED.

3. Judge Hill's motion to dismiss is GRANTED.

4. The motions to dismiss of defendant Hines and defendants Frank are GRANTED.

5. Defendant Hines' motion to dismiss under Fed. R. Civ. P. 8 is GRANTED.

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[4] These actions are themselves susceptible of being construed as violations of Judge Hill's injunction against further removal of her claim from state court, in that plaintiff is attempting to relitigate many of the issues raised before Judge Hill and in the two prior removal actions.

6. Defendants Chuck Hammer and the County of Dallas are DISMISSED under Local Rule 3.1(f).

7. Plaintiff's motions for quantum meruit recovery in the nature of attorney's fees for preparation of pleadings are DENIED.

8. Defendants shall advise the court within ten (10) days whether they wish to pursue their claims for attorney's fees.

PATRICK E. HIGGINBOTHAM
UNITED STATES DISTRICT JUDGE

(31)

U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
OCT 1 1979
JOSEPH McELROY, JR., CLERK
BY
Deputy

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

BETTY (MINYARD) STEIN, *

Plaintiff, *

V. * CIVIL ACTION NO. 3-79-0968-G

JUDGE ROBERT HILL, et al., *

Defendants. *

MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO DISMISS THE COMPLAINT

The complaint in this cause, which invokes the jurisdiction of the Court pursuant to Rule 60(b), Federal Rules of Civil Procedure, to set aside a judgment entered by defendant Judge Robert Hill in Civil Action No. 3-77-1604-D, also contains a demand against all defendants for actual and exemplary damages. There is no basis on which this suit may be maintained against Judge Hill, and as to him the complaint must be dismissed.

Insofar as plaintiff seeks to set aside the judgment in Civil Action No. 3-77-1604-D, it is clear that the complaint states no claim against Judge Hill upon which relief can be granted, since he was not a party to that suit, and is not alleged to have participated in any way in the events which occasioned that litigation. Read as an independent action pursuant to Rule 60(b), the complaint fails to contain, with respect to Judge Hill, "a short and plain statement of the claim showing that the pleader is entitled to relief." Rule 8, Federal Rules of Civil Procedure. Cf. Kinnear-Weed Corp. v. Humble Oil & Refining Co., 441 F.2d 631 (5th Cir. 1971), cert. denied, 404 U.S. 941. The complaint should therefore be dismissed as to defendant Judge Robert Hill.

In addition to demanding that this Court set aside the judgment in Civil Action No. 3-77-1604-D, plaintiff seeks damages from defendants, including Judge Hill, on the ground that defendants'

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conduct included "insults and harassment" and was "wanton," fraudulent," and "malicious" (Complaint, p. 7). It is not entirely clear from the complaint whether Judge Hill is sued as an individual or in his official capacity. See Complaint, p. 2. On neither basis may the damage action be maintained against Judge Hill.

To the extent that Judge Hill is sued in his official capacity, the suit is actually one against the United States, for a judgment against the defendant would require a disbursement from the public treasury. Hawaii v. Gordon, 373 U.S. 57 (1963), and cases cited therein. The United States may not be sued without its consent, and waivers of the sovereign's immunity are strictly construed. United States v. Testan, 424 U.S. 392, 399 (1976); United States v. Sherwood, 312 U.S. 584, 587, 590 (1941). A partial waiver of sovereign immunity is contained within the Federal Tort Claims Act, 28 U.S.C. §§2671 et seq. The Act, however, does not apply to officers of the judicial branch; nor to the type of conduct of which plaintiff complains. 28 U.S.C. §§2671, 2680(h). Injured parties are not insured compensation for all wrongful acts of government employees. Dalehite v. United States, 346 U.S. 15, 17 (1953). The complaint must be dismissed, as the action is barred by sovereign immunity.

If it is plaintiff's intention that Judge Hill be sued in his individual capacity, the complaint must be dismissed in any event, for the reason that a judge, acting with jurisdiction of the subject matter before him, is absolutely immune from suit for damages. Stump v. Sparkman, 435 U.S. 349, 356 (1978). Civil Action No. 3-77-1604-D was an action commenced in the United States District Court by the plaintiff in this case, on petition for removal of an action pending in a court of the State of Texas. There is no question that Judge Hill, to whom the cause was assigned, had jurisdiction to entertain the petition for removal. See 28 U.S.C. §§1441 et seq. This is, therefore, not a case in which a judge has acted in the clear absence of all jurisdiction. Stump v. Sparkman, supra, 435 U.S. at 357.

Plaintiff contends that there is an exception to the principle of judicial immunity when the allegedly wrongful act is merely ministerial, and she complains that Judge Hill violated "his ministerial duty to give complaintant [sic] a fair and just hearing" (Complaint, p. 2). There is, however, no distinction between ministerial and discretionary acts for the purpose of applying the principle of judicial immunity. Chalk v. Elliott, 449 F.Supp. 65, 68 (N.D. Tex. 1978). An act is "judicial" for this purpose whenever it relates to a "function normally performed by a judge" and if the parties "dealt with the judge in his judicial capacity." Stump v. Sparkman, supra, 435 U.S. at 362.

Nor may plaintiff avoid application of judicial immunity by her contention that the specific actions of Judge Hill were erroneous, malicious, or in excess of his authority, or constituted a denial of procedural due process (Complaint, pp. 2-3). Stump v. Sparkman, supra, 435 U.S. at 356, 359. 1/ The defendant, Judge Hill, is absolutely immune from liability to plaintiff in this suit, and, as to him, the complaint must be dismissed.

Respectfully submitted,

KENNETH J. MIGHELL
United States Attorney

Judith A. Shepherd
JUDITH A. SHEPHERD
Assistant United States Attorney

1/ Among plaintiff's allegations of wrongful conduct by Judge Hill are assertions that the Judge acted wrongfully and in excess of his authority when he enjoined plaintiff "from any further removal from the State Court to the Federal Court as this cause is presently constituted" and in awarding to plaintiff's opponents attorney's fees for six and one-half hours' work and the costs incurred in opposing the petition for removal. Civil Action No. 3-77-1604-D, Order of January 11, 1978. The Court expressly found that plaintiff had removed the same suit on two previous occasions, and that the third petition had been taken in bad faith. It is settled that a federal court has the power under the All Writs Act, 28 U.S.C. §1651, to enjoin further litigation as to issues previously disposed of, especially when the court deems continued litigation vexatious and harassing. Kinnear-Weed Corp. v. Humble Oil & Refining Co., supra, (Footnote continued on following page)

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on Betty Minyard Stein, Plaintiff, 6600 Westchester Drive, Dallas, Texas 75205, and Mr. Robert C. Lively and Mr. Norman P. Hines, Jr., 310 Bank of Dallas Building, 3635 Lemmon Avenue, Dallas, Texas 75219, Attorneys for co-defendants, by depositing same in the United States mail this 1st day of October, 1979.

Judith A. Shepherd

JUDITH A. SHEPHERD
Assistant United States Attorney
1100 Commerce Street, Room 16G28
Dallas, Texas 75242
(214) 767-0958

1/ (Footnote continued from previous page)
441 F.2d at 637. It is also clear that a court is justified in awarding attorney's fees against a party who "has acted in bad faith, vexatiously, wantonly, or for oppressive reasons. . . ." F. D. Rich Co. v. Industrial Lumber Co., 417 U.S. 116, 129 (1974); Kinnear-Weed Corp. v. Humble Oil & Refining Co., supra, 441 F.2d at 637; 6 J. Moore, Federal Practice §54.77[2] at 1709 (2d ed. 1976).

IN THE SUPREME COURT,
WASHINGTON, D. C.

AFFIDAVIT FOR INABILITY TO PAY AND TO PROCEED IN FORMA PAUPERIS

STATE OF TEXAS
COUNTY OF TEXAS

BEFORE ME, Betty Sue Brown on the 22nd day of Dec 1980, NOTARY PUBLIC IN AND FOR DALLAS COUNTY, TEXAS PERSONALLY APPEARED Betty (Minyard) Stein who is known to me personally and she does under oath solemnly swear and under oath sayeth: I, Betty (Minyard) Stein do solemnly swear and under oath swear that I am unable to pay the costs of this appeal to the United Stats Supreme Court. My present income for almost six months now is $200.00 per month and that is spent almost before it is received. My four-unit apartment bldg is stnading entirely vacant due to the Highland Park INd. School District building an wast-wing appr. thirty-nine feet from the front entrance of the building and my farm brings the $200.00 per month. I at time go without food, I now go entirely without gas for heat or hot water. I have no automobile since my tires were slashed and my brakes went out and my son took the car away from me since he had given it to me. I have no funds for maintenance on it anyway and the building is is desperate need of all types of repair. I am still border-line diabetic since I cannot afford the proper foods and am in constant paind. My farm is on the market as commercial property and someday I shall have some money, and I am on appeal in the 1967 reondemnation case with T. P. and LIght Co. and they have been talking of a new condemnation case for over five years now. Therefore soon I can pay my debts I hope and pay this Supreme court the $200.00 I owe it for prior docketing of cases. I have 22 cents in my checking account for months now and have appr. thirty-five dollars for necessities until Jan. 1, 1989. I have no stocks or bonds and for the proper adjudication of this case and that justice may be done I request that I be allowed to proceed in forma pauper in this case and I shall pay the court for this case also when I get some money to do so, on this the 22nd day of Dec 1980.

BETTY (MINYARD) STEIN, PRO SE

SWORN TO AND SUBSCRIBED to before me and known personally to me and that all of her statments in the affidavit above are true to her personal knowledged on this the 22nd day of Dec, 1980.

Betty Sue Brown
Notary Public in and for Dallas County, Tex. and my com. exp. on the 22nd day of Dec, 1980.

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